

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

Nathan D. Schluter,

Petitioner,

v.

City of Minneapolis,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for an evidentiary hearing before Administrative Law Judge Barbara L. Neilson on the City's motion for summary disposition. The hearing took place on October 11, 2001 at the Office of Administrative Hearings in Minneapolis, Minnesota. The City filed its closing argument brief on October 31, 2001. The Respondent filed his closing argument brief on November 13, 2001. The record closed on November 21, 2001, with the City's filing of a supplemental response brief.

James A. Cunningham, Jr., Assistant City Attorney, Office of the City Attorney, 333 South 7th Street, Suite 300, Minneapolis, Minnesota 55402, appeared on behalf of Respondent City of Minneapolis ("City"). Steven K. Marden, Attorney at Law, Marden Law Offices, 2100 Foshay Tower, 821 Marquette Avenue, Minneapolis, Minnesota 55402, appeared on behalf of Petitioner Nathan D. Schuler.

NOTICE

This Report is a recommendation and not a final decision. After a review of the record, the Commissioner of the Minnesota Department of Veterans Affairs will make the final decision, in which he may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61 (2000), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Clint Bucher, Minnesota Department of Veterans Affairs, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155-2079, telephone (651) 297-5828 to inquire about filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issue in this case is whether the City properly notified Petitioner of his proposed termination and his right to a hearing under the Veterans Preference Act.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner, Nathan D. Schluter, is an honorably discharged veteran who had four years of active service in the Army.^[1] As such, Petitioner is a “veteran” within the meaning of Minn. Stat. § 197.447 and is entitled to the protections of the Veterans Preference Act.

2. The Petitioner first worked as a truck driver for the City of Minneapolis (“City”) Public Works Department in 1990 and 1991.^[2] On September 12, 1991, Petitioner resigned his position because he had been sentenced to serve approximately eight months in the County jail as a result of a criminal conviction.^[3]

3. In a letter dated October 2, 1991, to the Minneapolis Civil Service Commission, Petitioner explained that he had resigned his position after being told that he would “be terminated due to job abandonment” once incarcerated. Petitioner further explained that he understood a resignation would be better than a termination for reinstatement purposes.^[4]

4. On June 3, 1992, the City’s Public Works Department again hired Petitioner as a truck driver. Petitioner was a member of Minnesota Teamsters Public and Law Enforcement Employees’ Union, Local 320.^[5]

5. When Petitioner was hired in June of 1992, he was living in Minneapolis at 3931 Emerson Avenue North.^[6]

6. David Babcock has been the supervisor of the Equipment Services Division of the City’s Public Works Department since 1995. Mr. Babcock was also Petitioner’s direct supervisor. Mr. Babcock oversees the field operations of the Equipment Services Division and directly supervises the dispatchers, drivers and equipment operators. Mr. Babcock’s duties include managing personnel issues and approving requests for leave or time off.^[7]

7. Dispatchers in the Public Works Department’s dispatch office assign the routes and equipment to the truck drivers and maintain a log of all sick leave or vacation requests.^[8] The dispatch office also posts a monthly listing of employees’ names, phone numbers, and leave times.^[9] During their initial orientation and throughout their employment, employees are told that they must stay in contact with the dispatch office and let the dispatchers know where they are.^[10]

8. In August of 1996, Petitioner and his wife moved to a new home located at 1241 Karth Lake Drive in Arden Hills, Minnesota. A dispatcher who became aware that Petitioner had moved, gave Petitioner an Address Change Form to fill out and submit. Address change forms are kept at the dispatch office. If an employee submits an address change form, a copy is placed in the employee’s file and the original is sent to

the payroll department. Petitioner filled out the address change form and submitted it to the dispatch office on or about August 29, 1996. Petitioner listed 1241 Karth Lake Drive in Arden Hills as his new home address.^[11]

9. City employees were reminded at periodic work-related training sessions to submit Address Change forms if they had recently moved.^[12]

10. On August 25, 1997, Petitioner's wife obtained an Order for Protection against Petitioner in Ramsey County District Court. The Order prohibited Petitioner from having contact with his wife and from entering, staying or being present at the 1241 Karth Lake Drive residence. The Order was effective for a period of one year.^[13]

11. After the Order for Protection was issued, Petitioner moved into his brother's home located at 5408 Russell Avenue North in Minneapolis.^[14]

12. Sometime in September 1997, Petitioner and his wife reconciled and he moved back into the 1241 Karth Lake Drive residence. The reconciliation, however, lasted only one week. After that, Petitioner moved back to his brother's house.^[15]

13. Petitioner never submitted an Address Change form to the dispatch office or to anyone else in the Public Works Department or any other City department after he moved out of the 1241 Karth Lake Drive residence.^[16]

14. From approximately mid-to-late October 1997 through December 1997, Petitioner was out of work on worker's compensation for a broken wrist.^[17]

15. In November of 1997, Petitioner's wife filed a petition for dissolution of their marriage. At that time, and until approximately December 1999, the Petitioner lived at his brother's house at 5408 Russell Avenue North in Minneapolis, Minnesota, and his wife lived at 1241 Karth Lake Drive in Arden Hills.^[18]

16. The City's Public Works Department has its drivers submit copies of their driver's licenses and records twice a year to verify that no employee was driving City vehicles without a valid license. On December 2, 1997, Petitioner filled out a form at the Hennepin County Service Center in Brookdale to get a copy of his driver's license record. On this form, Petitioner listed his residential address as 1241 Karth Lake Drive, Arden Hills, Minnesota.^[19]

17. As of March 9, 1998, Petitioner's driver's license record listed his address as 1241 Karth Lake Drive, Arden Hills, Minnesota.^[20] Petitioner's 1997 and 1998 W-2 forms also listed Petitioner's address as 1241 Karth Lake Drive, Arden Hills, Minnesota. Both W-2 forms were mailed to Petitioner's Arden Hills address. Petitioner's 1998 W-2 form would have been mailed to the Arden Hills address in early 1999. Petitioner never received these tax records and claims to have not filed income tax forms since 1997, despite working intermittently since 1999.^[21]

18. Petitioner never told Mr. Babcock that he was living at his brother's house and that he was no longer living at 1241 Karth Lake Drive in Arden Hills.^[22]

19. On March 12, 1998, Petitioner called the dispatch office and told the dispatcher, Mary Jansen, that he was sick and that he would not be coming into work for a few days. Petitioner hung up the telephone before Ms. Jansen could ask him any more questions.^[23]

20. Petitioner was not, in fact, sick on March 12, 1998. Rather, Petitioner was unable to go to work because he had to appear in court for sentencing on Fifth Degree Assault and Gross Misdemeanor Stalking and Harassment charges. The Petitioner's wife was the victim in both matters.^[24]

21. Petitioner was convicted of Fifth Degree Assault and Gross Misdemeanor Stalking and Harassment in Ramsey County District Court on March 12, 1998. Petitioner was sentenced to 90 days in jail on the assault charge, and to one year in jail on the stalking and harassment charge. In addition, on April 14, 1998, Petitioner was convicted of Third Degree Felony Assault in Hennepin County District Court for assaulting his wife and breaking her nose. The Petitioner was sentenced to one year in jail on the Hennepin County matter, which he served concurrently with the Ramsey County sentences.^[25]

22. After his sentencing on March 12, 1998, Petitioner was taken directly from court to jail.^[26]

23. On or about March 14, 1998, Petitioner called his supervisor, David Babcock, and told him that he was in jail but that he expected he would be able to get work release. The Petitioner did not tell Mr. Babcock how long he was going to be in jail.^[27]

24. Petitioner was denied work release and remained incarcerated until December 13, 1998.^[28]

25. By March 16, 1998, Mr. Babcock and Mary Jauman,^[29] a Human Resources Senior Consultant for the City's Public Works Department, were aware that Petitioner was incarcerated. They did not know, however, how long Petitioner would remain in jail, the details of his sentence, or whether he had been given work release.^[30]

26. Sometime in March of 1998, Petitioner filled out a leave of absence form and gave it to a co-worker to give to Mr. Babcock. When the co-worker presented it to Mr. Babcock, Mr. Babcock refused to accept it because he said the employee requesting the leave must personally submit the form.^[31]

27. While in jail, Petitioner assumed that he had lost his job with the City. Petitioner was aware that an absence from work without cause for three days or more was considered job abandonment. If he was absent from work for three days due to being incarcerated, Petitioner assumed that that would be deemed to be job abandonment and that he would lose his job.^[32]

28. A departmental administrative hearing to discuss Petitioner's possible violations of work rules and disciplinary action was scheduled for April 17, 1998, at 10:30 a.m. at the Minneapolis City Hall. The City scheduled the meeting in part because Mr. Babcock had received information that Petitioner may have driven City vehicles without a valid driver's license. Petitioner did not appear for the meeting or call to reschedule it.^[33]

29. By letter dated May 4, 1998, Ms. Jauman notified Petitioner that the City had terminated his employment effective April 17, 1998. This letter was addressed to Petitioner and sent to the 1241 Karth Lake Drive address in Arden Hills, which was the

last address the City had for Petitioner in its human resources database. Although Ms. Jauman was aware that Petitioner was in jail in March, she did not know how long his sentence was and she was not aware that Petitioner was no longer residing at the Arden Hills address.^[34]

30. Ms. Jauman's May 4, 1998, letter indicated that the reasons for Petitioner's discharge were his failure to report the loss of his drivers license as required by Public Works policy within 24 hours of the loss or suspension of the license, in violation of Civil Service Rule 11.03 A 4; his failure to be available for call-out on March 6, 13, and 15, 1998, as required by the on-call policy, in violation of Civil Service Rule 11.03 B 1; his failure to be available for call-out and failure to show for two department meetings to discuss his employment on March 10, 1998, and April 17, 1998, in violation of Civil Service Rule 11.03 B 3; and his failure to report the loss of his driver's license as required and his driving of a City vehicle without a valid driver's license, in violation of Civil Service Rule 11.03 B 18. The letter asserted that the Petitioner failed to attend a departmental administrative hearing that was scheduled for April 17, 1998, at 10:30 a.m. to discuss his employment situation and did not call to reschedule the meeting. Because of this, the letter indicated that the City had no recourse other than termination from employment.^[35]

31. Enclosed with Ms. Jauman's May 4, 1998, letter was a "Recommendation for Discharge" form. The form listed Petitioner's name, job title, the effective date of discharge, and the reasons for the discharge. The reverse side of the "Recommendation for Discharge" form included the following notice regarding the right of veterans to a hearing:

NOTICE TO EMPLOYEES OF LEGAL RIGHTS
DISCHARGE AND PROBATIONARY RELEASE

* * *

Veteran Employees (Probationary and Permanent)

Any classified employee, holding a position by appointment or employment with the City . . . and who is a veteran separated from the United States military service under honorable conditions, has a right to a hearing prior to discharge No City employee who is a veteran can be removed or demoted except for incompetence or misconduct shown after a hearing, upon due notice, and upon stated charges presented in writing. Temporary employees who are veterans do not have a right to a hearing.

* * *

REQUESTING A HEARING

IMPORTANT: The employee should refer to the Civil Service Rules and/or the appropriate labor contract to determine what, if any, appeal rights he or she may have. The employee may choose whether to appeal this action through the Civil Service commission or through processes available through the labor contract, but may not appeal through both.

* * *

Requesting a Hearing: Veterans

A written request for hearing must be mailed to the Civil Service Commission within 60 calendar days of when the notice was served in person or was receipted for at the *employee's last known address*. The 60 days are counted from the first day after the notice was personally served or the date the notice was receipted by certified mail. If the 60th day falls on a Saturday, Sunday, or legal holiday, the request may be served on or before the following business day. The date of postmark must be within that 60-day period. The request for a hearing may be accompanied by the employee's statement of his or her version of the case. If such a request is not received within 60 days, the veteran's name will be removed from the service register. (Emphasis added.)

ALL REQUESTS FOR A HEARING AND APPEALS SHOULD BE MAILED WITHIN THE REQUIRED TIMELINES TO:

Minneapolis Human Resources Department/Civil Service Commission
250 South 4th Street, Room 100
Minneapolis, MN 55414-1339^[36]

32. Ms. Jauman's May 4, 1998, letter and enclosed "Recommendation for Discharge" form were sent to 1241 Karth Lake Drive by certified mail. Someone other than the Petitioner accepted delivery of the letter on May 8, 1998, and signed the certified return receipt card.^[37]

33. Petitioner never received or saw Ms. Jauman's May 4, 1998, letter and Recommendation for Discharge. Petitioner's wife did not forward the letter to him in jail.^[38]

34. While in jail, Petitioner contacted his cousin (George Vojta) for assistance with filing a grievance through his union to protest his termination. Mr. Vojta was the President of another local of the union. Mr. Vojta contacted Paul Nelson, the Business Agent for Petitioner's union (Local 320), on Petitioner's behalf.^[39]

35. On May 15, 1998, Paul Nelson, Business Agent for Teamsters Local #320, filed a grievance on behalf of Petitioner appealing the termination of his employment. The grievance was addressed to Mr. Babcock and the cover letter indicated that Petitioner was copied on the letter.^[40] Mr. Nelson listed Petitioner's address on the grievance application as 5408 Russel Avenue North, Minneapolis. Although Petitioner never talked with Mr. Nelson about the grievance, he talked to his cousin about the filing of a grievance relating to his termination.^[41]

36. In her response letter to Mr. Nelson dated May 27, 1998, Ms. Jauman detailed the chronology of events leading up to the decision to terminate Petitioner. Ms. Jauman explained that the City was initially concerned that Petitioner may have driven a City vehicle without a valid driver's license. The City scheduled a meeting to discuss this matter with Petitioner for March 10, 1998, but Petitioner did not appear for the meeting. Thereafter, Petitioner was incarcerated and was unavailable for work. Ms. Jauman explained that the City does not grant leaves of absence for incarceration and employees are not permitted to use sick or vacation leave to cover an absence due to incarceration. Ms. Jauman stated that she believed the City acted appropriately and in accordance with civil service rules and the governing labor contract. Ms. Jauman closed the letter by informing Mr. Nelson that Petitioner's grievance was denied.^[42] There is no evidence that the grievance was pursued thereafter.

37. The Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree with respect to the dissolution of the Petitioner's marriage was issued August 6, 1998.^[43]

38. Petitioner was released from jail in December 1998. In January 1999, Petitioner called David Babcock and Paul Nelson of Local 320 to see if he could get his job back with the City. Neither Mr. Babcock nor Mr. Nelson returned Petitioner's calls. Eventually, someone at Local 320 told Petitioner's cousin to tell the Petitioner to quit calling Mr. Nelson because Petitioner was not going to get his job back. Petitioner's cousin passed this message on to the Petitioner and he quit calling Mr. Nelson.^[44]

39. On or about October 17, 2000, the Petitioner filed a Petition for Relief under the Veterans Preference Act with the Department of Veterans Affairs. In his petition, the Petitioner alleged that he was unfairly released from employment with the City and membership in Teamsters Local 320. Petitioner asserted that he was not given any information in writing, his telephone calls were not returned, and his e-mail messages were not answered. Petitioner asked for reinstatement with seniority and backpay.

40. The Commissioner of Veterans Affairs issued the Notice of Petition and Order for Hearing initiating this contested case proceeding on November 6, 2000.

41. On June 27, 2001, the Administrative Law Judge issued an Order denying the City's motion for summary disposition. In the Order, the Administrative Law Judge ruled that it was sufficient for an employer to serve the notice of intent to discharge and right to request a hearing under the Veteran's Preference Act by mail sent to the veteran's last known address. The Judge ordered that an evidentiary hearing be held to address the issue of whether the notice of the City's intention to discharge him and notice of his right to a veteran's removal hearing was, in fact, sent to the Petitioner at his last known address. Evidence presented at that hearing is the subject of this Report.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Veterans Affairs have jurisdiction in this matter pursuant to Minnesota Statutes §§ 14.50 and 197.481 (2000).

2. The Petitioner is an honorably discharged veteran within the meaning of Minn. Stat. § 197.46 and 197.447 (2000).

3. The City of Minneapolis is a political subdivision of the State of Minnesota within the meaning of Minn. Stat. § 197.46 (2000).

4. The City has complied with all relevant substantive and procedural requirements of statute and rule, and this matter is properly before the Administrative Law Judge.

5. The Petitioner has the burden of proof to establish by a preponderance of the evidence that he was denied his rights under the Veterans Preference Act, Minn. Stat. § 197.46.^[45]

6. Minn. Stat. § 197.46 (2000) prohibits the removal of a qualified veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges in writing.

7. Minn. Stat. § 197.46 addresses the nature of the notice to be provided to veterans entitled to protection under the Veterans Preference Act. The statute provides, in pertinent part:

Any veteran who has been notified of the intent to discharge the veteran from . . . employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge. The failure of a veteran to request a hearing within the provided 60-day period shall constitute a waiver of the right to a hearing. Such failure shall also waive all other available legal remedies for reinstatement.

8. Pursuant to the rules of the Office of Administrative Hearings governing contested case proceedings, "service" is defined as personal service or "service by first class United States mail . . . postage prepaid and addressed to the party at his or her last known address." Minn. Rule 1400.5100, Subp. 9 (2001).

9. The City complied with the notice provisions of Minn. Stat. § 197.46 when it sent written notice of its intent to discharge and right to a hearing to Petitioner's last known address.

10. The Petitioner has failed to establish that the City denied him any rights he had under the Veterans' Preference Act. By failing to request a hearing within 60 days of receipt of the notice of intent to discharge at his last known address, Petitioner waived his right to a hearing and is no longer entitled to a hearing.

11. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is incorporated herein by reference.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the Commissioner of Veterans Affairs DISMISS the petition of Nathan D. Schluter requesting relief under the Veterans' Preference Act.

Dated: December 21, 2001.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape-recorded (3 tapes); no transcript prepared.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Petitioner maintains that he was not properly notified by the City of its intent to discharge him and of his right to a hearing under the Veterans Preference Act. Petitioner was incarcerated in the Ramsey County jail at the time the City mailed its written notice to his former Arden Hills address. Petitioner never received the written notice and contends that the City violated his rights under the Veterans Preference Act by sending the written notice to a residence where he had not lived since at least October 1, 1997.

In her previously issued Order addressing the City's Motion for Summary Disposition, the Administrative Law Judge determined that service of the notice by mail to the veteran's last known address is sufficient. The Judge declined to rule that the Veterans Preference Act requires that the veteran actually receive the written notice of intent to discharge and notice of hearing rights. The evidentiary hearing underlying the current Report was ordered because the Judge determined that a hearing was necessary to resolve genuine issues of material fact relating to whether the notice issued by the City was, in fact, provided to the Petitioner's last known address. The issues addressed at the hearing included whether the Petitioner actually received or was informed of the proposed termination and hearing rights; what address the Petitioner had provided to the City; what, if any, steps the Petitioner took to notify the City of a change of address; and whether the Petitioner in fact informed the City that he would be incarcerated in the Ramsey County Jail for a length of time.

The City asserts that it took sufficient steps to comply with the notice provisions set forth in Minn. Stat. § 197.46 when it sent written notice of the City's intent to discharge the Petitioner and the Petitioner's right to a hearing to the Petitioner's home address. The City established that the last known address it had on file for Petitioner was the 1241 Karth Lake Drive address in Arden Hills, Minnesota. The City presented evidence that it sent written notice to this address by both U.S. and certified mail and that the certified mail envelope was, in fact, accepted by someone at the Karth Lake Drive address. Petitioner admitted at the hearing that he never submitted an Address

Change form to the Public Works Department's dispatch office or to anyone else in any City department after he moved out of his Arden Hills home in September of 1997. And, although Petitioner's supervisor, David Babcock, and the City's Human Resources consultant, Mary Page (Jauman), were aware that Petitioner was incarcerated in March of 1998, neither was aware of how long Petitioner would be in jail. Petitioner never informed Mr. Babcock of the length of his sentence and Petitioner told Mr. Babcock that he thought he would be able to get out of jail on work release. Consequently, the City argues that it was appropriate for it to mail the May 4, 1998, notice of termination to the Petitioner's last known address at 1241 Karth Lake Drive in Arden Hills.

Although the Petitioner alleged that he was unaware that he had been discharged by the City, this allegation lacks factual support in the record. The Petitioner admitted at the hearing that he assumed that he had lost his job while he was in jail and, in fact, had submitted a resignation when he was incarcerated during a previous period of employment with the City to avoid being terminated due to job abandonment. The Petitioner also testified (contrary to his assertions in an affidavit filed in connection with the City's motion for summary disposition) that he knew about the union grievance filed on his behalf regarding his termination and, in fact, had asked his cousin to assist him in ensuring that the grievance was filed. The grievance protesting Petitioner's termination was filed on May 15, 1998, within a week after the City's notice was delivered to the Karth Lake Drive address. Thus, there is convincing evidence that Petitioner was aware that he had been discharged from his position by at least May 15, 1998.

Based on the record developed at the evidentiary hearing, the Administrative Law Judge concludes that it was reasonable and appropriate for the City to send its notice of discharge and right to a hearing to the Karth Lake Drive address that Petitioner had identified as his residence. Because Petitioner never informed the City of any change of address, the Karth Lake Drive address was the last known address for Petitioner on file with the City. Even if, as Petitioner testified, two dispatchers and Mr. O'Connor were aware at some point that he had separated from his wife and moved out of the Karth Lake Drive residence, his informal discussions with these individuals would not provide the City with sufficient notice of a permanent change in his address. The Petitioner knew the procedure for accomplishing a change of address and, in fact, had filed a Change of Address form in 1996 when he first moved into the Karth Lake Drive address. Despite this fact, the Petitioner did not fill out an Address Change form when he moved out of the home in September of 1997. Under questioning by the City's counsel, Petitioner could not explain why he had not filled out an Address Change form other than to suggest that he continued to have "false hopes" that he and his wife would reunite.^[46] Regardless of the reason, it is Petitioner's responsibility to notify his employer of any change of address and not the City's responsibility to investigate where its employees live. Although the City knew that Petitioner was in jail in March, it did not know how long Petitioner would be in jail. The notice of discharge was not sent until May. Moreover, Petitioner had informed his supervisor that he believed he would be getting out of jail on work release. For all of these reasons, it was reasonable for the City to send its notice of discharge and right to a hearing to what it believed was Petitioner's home address.

The Administrative Law Judge concludes that the City complied with the notice provisions of Minn. Stat. § 197.46 when it sent written notice of its intent to discharge and Petitioner's right to a hearing to Petitioner's last known address. Petitioner's failure to request a hearing within the provided 60-day period constitutes a waiver of his right to a hearing. He thus barred from asserting any right to a veteran's preference hearing now, more than three years after his discharge. Based on all of the evidence presented, the Administrative Law Judge recommends that the Commissioner of Veterans Affairs dismiss Petitioner's petition for relief under the Veterans Preference Act.

B.L.N.

^[1] Stipulation of parties; See *also* Petitioner's Form DD 214, attached to the Notice of Petition and Order for Hearing issued by the Department of Veterans Affairs.

^[2] Testimony of Schluter.

^[3] *Id.*; Ex. 22.

^[4] Ex. 22.

^[5] Testimony of Schluter; Ex. 1.

^[6] Ex. 1.

^[7] Testimony of Babcock.

^[8] Testimony of Babcock, Jansen, and Schluter; Ex. 21.

^[9] Testimony of Babcock, Jansen; Ex. 21.

^[10] Testimony of Babcock, Jansen.

^[11] Testimony of Babcock, Jansen, Schluter; Ex. 2.

^[12] Testimony of Page (Jauman), O'Connor.

^[13] Ex. 18.

^[14] Testimony of Schluter.

^[15] Testimony of Schluter.

^[16] Testimony of Babcock, Jansen, Schluter.

^[17] Testimony of Schluter.

^[18] Ex. BB, appended to Petitioner's May 22, 2001, letter; Ex. 19.

^[19] Testimony of Babcock; Ex. 10.

^[20] Ex. 6.

^[21] Ex. 9; Testimony of Schluter.

^[22] Testimony of Schluter.

^[23] Testimony of Jansen and Schluter; Exs. 8, 14.

^[24] Testimony of Schluter; Ex. 19.

^[25] Ex. 19.

^[26] Testimony of Schluter.

^[27] Testimony of Babcock.

^[28] Testimony of Schluter; Ex. 20.

^[29] Ms. Jauman has since changed her name to Mary Page.

^[30] Testimony of Page (Jauman), Babcock; Ex. 15.

^[31] Testimony of O'Connor; Ex. 7.

^[32] Testimony of Schluter.

^[33] Ex. 3; Testimony of Page (Jauman), Babcock.

^[34] Testimony of Page (Jauman); Ex. 3.

^[35] Ex. 3.

[36] Ex. 3 (bold type in original).

[37] Ex. 4.

[38] Testimony of Schluter.

[39] Testimony of Schluter.

[40] Ex. D to Respondent's motion for summary disposition.

[41] Exs. 5, 16; Testimony of Schluter.

[42] Ex. 5.

[43] Ex. 19.

[44] Testimony of Schluter.

[45] Minn. Rules 1400.7300, subp. 5 (2001).

[46] This testimony supports an inference that even the Petitioner did not regard himself as having made a permanent change in the location of his residence.